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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/019,519	03/22/2002	Gerald R Koefeldt	RPC0462PUSA	8686

7590 05/11/2006

Konstantine J Diamond
4010 East 26th Street
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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 05/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

10/019,519

Applicant(s)

KOEFLDA ET AL.

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 49-77 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 49-77 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/27/01 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/16/02, 8/17/05, 8/</u> | 6) <input checked="" type="checkbox"/> Other: <u>IDS 8/22/05, 11/2/05</u> |

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 49-57, 59-62, 65-74 and 76 are rejected under 35 U.S.C. 102(b) as being anticipated by Apps et al. ('249) (Apps) and Kelly ('239).

Apps discloses a low depth tray for fluid containers comprising a base, a first pair of opposed end walls and a second pair of opposed side walls, each of the second walls including an upper portion and a lower portion, the upper portion including first areas of wave pattern having a single-walled construction and second areas of pylon construction for contacting the containers, the first areas are lower than the second areas and the first areas form a non-symmetrical contour (wave pattern) along the upper wall portion.

Re claim 67, the lower wall portion including an alternating arrangement of lower wall panels extending upwardly from the base and cutout portions. The lower wall portion nests within corresponding first areas of a tray disposed therebelow.

Re claim 68, the wave pattern along the upper wall portion of a first wall of the pair of second walls has an opposite orientation compared to the wave pattern along a second wall of the pair of second walls.

Kelly is similarly configured as Apps and the discussion of this rejection would be similar and repetitious.

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Claims 49, 51-53, 55, 56, 59 and 60 are rejected under 35 U.S.C. 102(b) as being anticipated by Umiker ('758) (Umiker).

Umiker discloses a low depth tray for fluid containers comprising a base, a first pair of opposed end walls and a second pair of opposed side walls, each of the second walls including an upper portion and a lower portion, the upper portion including first areas of wave pattern (lower edge of upper portion of side wall of embodiment shown in Fig. 6-10) having a single-walled construction and second areas (interior ribs) for contacting the fluid containers, at least a portion of the first areas (lower edge of upper portion) are lower than the second areas (interior ribs) and the first areas form a non-symmetrical contour along the upper wall.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 49-77 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGrath ('844) or Hammett ('477) in view of Kelly ('239).

McGrath ('844) discloses a low depth tray for fluid containers comprising a base, a first pair of opposed end walls and a second pair of opposed side walls, each of the second walls including an upper portion and a lower portion, the upper portion including an outer band and an interior portion with inwardly extending ribs or protrusions which define pylons which are capable of contacting the fluid containers. The inwardly extending ribs or protrusions define second areas for contacting the containers. McGrath ('844) discloses the invention except for the first areas having a single walled construction, wherein the first areas are lower in height than the

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second areas and the first areas form a non-symmetrical contour along the upper wall portion.

Kelly teaches a side element for a low depth tray having a single walled construction, lower height than inwardly extending pylons of the upper wall portion and the side element has a wave pattern of non-symmetrical contour along the upper wall portion. It would have been obvious to add the side element of Kelly to the upper wall portion of McGrath ('844) at a height below the tops of the inwardly extending ribs of McGrath to define a first area in order provide an ornamental and aesthetically pleasing appearance to McGrath to improve the low depth tray's appeal to consumers and to increase the sales of the product contained within the low depth trays.

Re claim 67, McGrath ('844) has a lower wall portion that includes an alternating arrangement of lower wall panels extending upwardly from the base and cutout portions. The lower wall portion nests within corresponding first areas of a tray disposed therebelow.

Re claim 68, the wave pattern along the upper wall portion of a first wall of the pair of second walls of Kelly has an opposite orientation compared to the wave pattern along a second wall of the pair of second walls.

Re claims 63, 64 and 76, the handle portions shown by the embodiments of McGrath ('844) include top bars protruding above an upper edge of the first pair of opposed walls and the top bars include inwardly extending projections to provide lateral support to bottles loaded within the tray.


Re claims 57, 58, 74 and 75, the upper wall portion of McGrath ('844) includes a transition area of double walled construction immediately above the lower wall panels as shown in the cross section of Fig. 19.

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The discussion of Hammett ('477) in view of Kelly would be similar and repetitious.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on Tu-F 6:30 – 5:00.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc